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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ERIC KLOPMAN-BAERSELMAN, as
12 Personal Representative for the Estate of
13 RUDIE KLOPMAN-BAERSELMAN,
14 deceased,

15 Plaintiff,

16 v.

17 AIR & LIQUID SYSTEMS
18 CORPORATION, et al.,

19 Defendants.

CASE NO. 3:18-cv-05536-RJB

ORDER DENYING DEFENDANT
NATIONAL AUTOMOTIVE
PARTS ASSOCIATION'S MOTION
FOR RECONSIDERATION OF
ORDER DENYING MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION

20 THIS MATTER comes before the Court on Defendant National Automotive Parts
21 Association's ("NAPA") Motion for Reconsideration of Order Denying Motion to Dismiss for
22 Lack of Personal Jurisdiction. ("Motion for Reconsideration"). Dkt. 246. The Court is familiar
23 with the record and filings herein and is fully apprised.

24 NAPA offers three arguments for reconsideration: "First, the Order [Denying Motion to
Dismiss for Lack of Personal Jurisdiction ("Order")] appears to have mistakenly cited to

1 inadmissible and incompetent evidence, including hearsay, testimony of witnesses lacking
2 personal knowledge, and mischaracterizations in plaintiff's brief." Dkt. 246, at 1.

3 "Second, it appears the Court may have overlooked a key distinction between branding or
4 licensing a product and manufacturing or distributing a product." Dkt. 246, at 2.

5 "Finally, the Order did not rule on NAPA's alternative request that an evidentiary hearing
6 be held to resolve any factual conflict." Dkt. 246, at 2.

7 * * *

8 Western District of Washington Local Civil Rule 7(h)(1) provides: "Motions for
9 reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a
10 showing of manifest error in the prior ruling, or a showing of new facts or legal authority which
11 could not have been brought to its attention earlier with reasonable diligence." LCR 7(h)(1).

12 For the reasons set forth below, the Court should deny NAPA's Motion for
13 Reconsideration.

14 1. THE COURT CONSIDERED INADMISSIBLE AND INCOMPETENT EVIDENCE

15 NAPA's argument is without merit. "At the summary judgment stage, we do not
16 focus on the admissibility of the evidence's form. We instead focus on the admissibility of its
17 contents." Fraser v. Goodale, 342 F.3d 1032, 1036 (9th Cir. 2003). The materials considered by
18 the Court were appropriate at summary judgment.

19 The Court used language from Plaintiff's brief to the extent that it fairly and conveniently
20 described evidence at issue, as considered in the light most favorable to Plaintiff. The Court was
21 fully apprised of the record and materials cited by the Parties as it relates to the Order.

1 2. THE COURT OVERLOOKED A KEY DISTINCTION BETWEEN BRANDING OR
2 LICENSING A PRODUCT AND MANUFACTURING OR DISTRIBUTING A
3 PRODUCT

4 NAPA's argument is without merit. The evidence and arguments offered by Plaintiff,
5 viewed in a light most favorable to Plaintiff, show that NAPA's activity in Washington went
6 beyond "merely licens[ing] the use of the 'NAPA' logo and trademark to its members and to
7 certain authorized supplies." Dkt. 213, at 3. *See* Dkt. 223. Viewed in a light most favorable to
8 Plaintiff, the evidence demonstrated that NAPA's activity in Washington included not just the
9 branding and licensing of a trademark, but also manufacturing and distributing asbestos-

10 3. THE COURT DID NOT RULE ON NAPA'S ALTERNATIVE REQUEST FOR AN
11 EVIDENTIARY HEARING

12 In the Order, the Court inadvertently did not rule on NAPA's alternative request for an
13 evidentiary hearing. *See* Dkt. 235. NAPA wrote in its Reply in Support of its instant Motion to
14 Dismiss:

15 [S]hould the Court have any question after reviewing all of the
16 written evidence submitted by both parties as to whether NAPA
17 itself distributed or sold asbestos-containing automotive parts,
18 NAPA requests that the Court exercise its discretion to hold an
19 evidentiary hearing to resolve any disputed question of fact
20 relating to the existence of personal jurisdiction over NAPA in this
21 case.

22 Dkt. 213, at 6.

23 The Court may, in its discretion, take evidence at a preliminary hearing in order to
24 resolve contested issues of jurisdictional fact. *See Data Disc, Inc. v. Sys. Tech. Associates, Inc.*,
557 F.2d 1280, 1285 (9th Cir. 1977).

 If the court determines that it will receive only affidavits or
 affidavits plus discovery materials, these very limitations dictate
 that a plaintiff must make only a prima facie showing of

jurisdictional facts through the submitted materials in order to avoid a defendant's motion to dismiss. Any greater burden such as proof by a preponderance of the evidence would permit a defendant to obtain a dismissal simply by controverting the facts established by a plaintiff through his own affidavits and supporting materials. Thus a plaintiff could not meet a burden of proof requiring a preponderance of the evidence without going beyond the written materials. Accordingly, if a plaintiff's proof is limited to written materials, it is necessary only for these materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss.

If a plaintiff makes such a showing, however, it does not necessarily mean that he may then go to trial on the merits. *If the pleadings and other submitted materials raise issues of credibility or disputed questions of fact with regard to jurisdiction, the district court has the discretion to take evidence at a preliminary hearing in order to resolve the contested issues.*

Id. (internal citations omitted) (emphasis added).

As discussed in the Order, Plaintiff made a prima facie showing of jurisdictional facts through submitted materials, including declarations and affidavits. *See* Dkt. 235. Although the materials relied on by NAPA and Plaintiff raise several issues of credibility and disputed questions of fact with regard to jurisdiction, the Court, in its discretion, declines to grant NAPA's request for an evidentiary hearing at this time. Jurisdiction issues may be further raised by motion.

4. CONCLUSION

NAPA has not shown manifest error in the Order, or shown new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence. Therefore, the Court should deny NAPA's Motion for Reconsideration. Jurisdiction issues may be raised by motion.

1 * * *

2 **THEREFORE**, it is **HEREBY ORDERED** that:

- 3 • Defendant National Automotive Parts Association's Motion for Reconsideration
4 of Order Denying Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 246)
5 is **DENIED**.

6 IT IS SO ORDERED.

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
8 to any party appearing *pro se* at said party's last known address.

9 Dated this 1st day of July, 2019.

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11 ROBERT J. BRYAN
12 United States District Judge
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